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REMARKS

In view of the following discussion, the Applicant submits that none of the claims now pending in the application are non-enabling, anticipated, or obvious under the respective provisions of 35 U.S.C. § 112, §102, and §103. Thus, the Applicant believes that all of these claims are now in allowable form.

It is to be understood that the Applicant, does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing this Response.

Objections

In the Claims

The Examiner has objected to claim 24 because it depends from claim 1. Specifically, the Examiner assumes that claim 24 should depend directly upon claim 23 and has made such assumption in his examination to expedite prosecution. In response, Applicant has hereinabove amended the dependency of claim 24 to be properly dependent upon (and as originally intended) upon independent claim 23. Accordingly, withdrawal of the objection is respectfully requested.

Rejections

Rejections of claims under 35 U.S.C. § 102

Claims 1 - 28 are rejected under 35 U.S. C. §102(a) as being anticipated by the Publication entitled "Scalable Atomic Multicast" (herinafter "SAM") authored by Rodrigues, Guerraoui and Schiper. Specifically, the Examiner alleges that SAM discloses a method for multicasting data messages to members of the multicast group which includes all the steps of independent claims 1, 7 and 23. The specific details and

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nature of the rejections can be found at pages 3 – 20 of the Examiner's February 4, 2004 Office Action and are not repeated here for sake of brevity. In response, the rejection is respectfully traversed.

Applicant offers that while SAM is in the technical field of the subject invention, there are deficiencies in the exact teachings of the reference. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). SAM fails to disclose each and every element of the claimed invention, as arranged in the claim.

The Examiner has expanded upon the claim language to force the teachings of the prior art to fit the claimed element, and thereby support the conclusion of anticipation. Such action is not permissible. The prior art must be such that a person of ordinary skill in the field of the invention would consider there to be no difference between the claimed invention and the reference disclosure. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991). In other words, the prior art reference must put the claimed invention in the hand of one skilled in the art. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985).

Specifically, Applicants have hereinabove amended each of the independent claims 1, 7, 23 to more clearly distinguish and identify that which Applicants consider the invention. It is respectfully submitted that SAM does not teach, disclose or suggest all the claimed features of the independent claims. The relevant portion of each of the independent claims is herein repeated for ease of viewing by the Examiner:

Claim 1 has been amended to read ...

assigning the first sequence number to the first data message, in response to the sequencer receiving a first quantity of the requests to

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assign a first sequence number to the first data message <u>said first quantity of requests being other than a majority of requests from the data servers</u>;

Claim 7 has been amended to read:

assigning a sequence number following all sequence numbers assigned prior to assignment of the sequence number to said each data message, in response to the sequencer receiving a first quantity of requests to assign a sequence number to said each data message <u>said first quantity of requests being other than a majority of requests from the data servers</u>;

Claim 23 has been amended to read...

assigning the sequence number to the data message <u>in response to a non-majority number of requests from the data servers</u>;

Steps 2 and 3 of SAM (as identified at page 5, column 2 of the reference) discusses creation of a timestamp for new messages and a corresponding assignment of the sequence number to such message. However, it is respectfully submitted that such sequence number is assigned by virtue of a collection of the aforementioned timestamps from a <u>qualified majority</u> of the multicast group members in order to invoke a consensus function to compute the sequence number (column 5, step 3, line 2-4). This qualified majority is further discussed and presented at the paragraph bridging page 4, column 2 – page 5, column 1. It is respectfully submitted that no such qualified majority of messages is necessary in the subject application nor are sequence numbers assigned in this manner as presently claimed. Specifically, the assignment of sequence numbers to data messages in the subject invention is a result of receipt of the first quantity of requests to assign a sequence number from a non-majority of data servers in the system associated with subject invention. Support for the amendments to claims 1, 7 and 23 that introduce this feature can be found at pages 17, lines 4-7 and lines 15-20; no new matter has been added. Accordingly, and as specifically

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indicated, the number of servers that are required before a sequence number is assigned is very small in comparison to the total number of clients or members that will be receiving the message. As such, this represents a distinguishing feature and overall improvement in the prior art in that a specific (and more limiting) majority number or group of requests from a specified individuals in the multicast group need not be satisfied to assign the sequence number.

As such, the Applicants submit that claims 1, 7 and 23 are not anticipated and fully satisfy the requirements under 35 U.S.C. § 102 and are patentable thereunder. Furthermore, claims 2-6, 8-22 and 24-28 depend, either directly or indirectly, from independent claims 1, 7 and 23 and recite additional features thereof. As such, and for at least the same reasons discussed above, the Applicants submit that these dependent claims also fully satisfy the requirements under 35 U.S.C. § 102 and are patentable thereunder. Therefore, the Applicants respectfully request that the rejection be withdrawn.
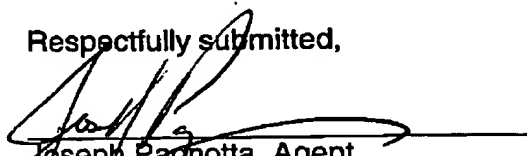
Conclusion

The Applicants submit that all of the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone <u>Mr. Eamon J. Wall</u> at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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